

EXHIBIT B



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January 16, 2024

VIA E-Mail

Hon. Freda L. Wolfson, U.S.D.J. (ret.)
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

**Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC*
No. 2:22-cv-02632 (ES) (CLW)**

Dear Special Master Wolfson:

On behalf of Defendant Save On SP LLC (“**SaveOn**”), we write to ask you to compel Plaintiff Johnson & Johnson Health Care Systems, Inc. (with its affiliates, “**J&J**”) to fully comply with that portion of the Court’s November 7, 2023 Order compelling J&J to add six additional document custodians and to run previously-agreed or ordered search terms over their documents. Dkt No. 173 at 2. Contrary to the Order, while J&J agreed to add the custodians, it refuses to run all search terms over their documents.

SaveOn moved the Court “to compel JJHCS to add the above twelve custodians and run ***all*** agreed-upon or Court-ordered search terms and any future agreed-upon or Court-ordered search terms over their files.” Dkt No. 165 at 15 (emphasis added). On November 7, 2023, Judge

Waldor granted that motion as to six of seven custodians, without limitation.¹ Yet J&J refuses run all search terms during the current discovery period of April 1, 2016 to November 7, 2023 for those custodians, saying it will instead run only two search terms related to its CAP program and only from January 1, 2022 to November 7, 2023. Ex. 1 (January 8-12, 2024 Email Chain).

J&J's position is baseless. It argues that a different part of the Order, compelling it to run three search terms related to its CAP program (the "CAP terms")² for all custodians from July 1, 2022 to October 30, 2023, Dkt. No. 166 at 5, somehow limits its searches for the six new custodians to those same restricted terms and time period. Ex. 1 (January 8-12, 2024 Email Chain). Not so. SaveOn's motion for new custodians, Dkt. No. 165, and its motion for the CAP terms, Dkt No. 166, were separate. Judge Waldor resolved them separately. *Compare* Dkt. 173 at 2 (ruling "with regard to SaveOnSp's request for relief as set forth in Docket Entry No. 165") *with id.* at 2-3 ("resolv[ing] the issues set forth in Docket Entry No. 166"). J&J has no basis to conflate the two; the Court's ruling on SaveOn's custodians motion stands on its own.

SaveOn's custodian motion asked that J&J run *all* search terms for new custodians, Dkt. 165 at 15, and Judge Waldor granted that motion as to the six custodians without limitation, Dkt No. 173 at 2. Judge Waldor separately imposed a time period starting in 2022 for the CAP terms, Dkt. 173 at 2-3, because SaveOn sought a similar time period in its CAP terms motion, Dkt. No. 166 at 5, but SaveOn sought no such limit in its custodians motion, Dkt. 165 at 15, and Judge Waldor imposed none. Where the Court imposed time limits, Dkt. 173 at 2-3 (setting "temporal scope" of CAP terms), or denied relief, *id.* at 2 ("SaveOnSP's request for relief set forth in Docket

¹ The parties agreed to add the following six custodians: Quinton Kinne, Daphne Longbothum, William Shontz, Alison Barklage, John Hoffman, and L.D. Platt.

² The terms are: "CAPm" OR "CAPa" OR "adjustment program." Dkt No. 166 at 5.

Entry No. 162 is DENIED”), it did so expressly, but it did not do so here.

Even were the Order ambiguous (it is not), there is no basis to limit searches for these custodians to the CAP terms or to exclude documents before 2022. J&J does not represent that these individuals’ relevant work was only on the CAP program and only in that time period. *See* Dkt. No. 165 at 22-25. In its custodians motion, to the contrary, SaveOn cited evidence of their broader relevance. *See, e.g.*, Dkt. No. 165 at 8-13 ([REDACTED]).

Unsurprisingly, then, these custodians have relevant documents that do not contain the CAP terms that J&J says it will use. Shontz, for instance, [REDACTED]. Ex. 2 (JJHCS_00002339) (“[REDACTED]”). This is strong evidence that J&J never believed that the existing CarePath language proscribed SaveOn, devastating to the tortious interference claim. Solely running the terms “CAPa,” “CAPm,” or “adjustment program,” would exclude this plainly relevant email. So too would it exclude [REDACTED], Ex. 3 (JJHCS_00011226), and [REDACTED] Ex. 4 (JJHCS_00001206), both of which demonstrate J&J’s awareness of how SaveOn works and go towards SaveOn’s mitigation defense. *Aff. Defs.* ¶¶ 24-29. J&J has no basis to restrict its searches of the custodians’

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documents to the three CAP terms.

These custodians also have relevant documents from before 2022, the date from which J&J declares it will begin running its searches. [REDACTED]

[REDACTED]
[REDACTED]. Dkt. No. 165 Ex. 126 (JJHCS_00069171);
Compl. ¶¶ 93, 96, 102. [REDACTED]

[REDACTED] for a J&J drug at issue in this case. Ex.
5 (JJHCS_00104963); Compl. ¶ 91. [REDACTED]

[REDACTED]. Ex. 6 (JJHCS_00142275). [REDACTED]

[REDACTED] Ex. 7 (ARCHBOW_000436), and [REDACTED]

[REDACTED]. Ex. 8 (JJHCS_00156513). Such documents concerning cost support and J&J's responses to accumulators and maximizers go to J&J's damages and SaveOn's mitigation affirmative defense. *See* Aff. Defs. ¶¶ 24-29. J&J has no basis to exclude the six custodians' documents from before 2022.

SaveOn thus respectfully requests that, consistent with the Order, Your Honor compel J&J to run all agreed-upon or court-ordered search terms for Shontz, Hoffman, Barklage, Longbothum, Kinne, Platt for the full discovery timer period of April 1, 2016 to November 7, 2023.

SaveOn appreciates the Court's attention to this matter.

Respectfully submitted,

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Hon. Freda L. Wolfson

Page 5

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Attorneys for Defendant Save On SP, LLC

Exhibit 1

From: Elizabeth Snow <esnow@selendygay.com>
Sent: Friday, January 12, 2024 3:38:00 PM
To: SaveOn-Team <SaveOn-Team@selendygay.com>
Subject: FW: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-JKS-CLW)

Elizabeth Snow

Associate [\[Email\]](#)

Selendy Gay Elsberg PLLC [\[Web\]](#)

Pronouns: she, her, hers

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+1 540.409.7257 [M]

From: Long, Julia (x2878) <jlong@pbwt.com>
Sent: Friday, January 12, 2024 3:37 PM
To: Elizabeth Snow <esnow@selendygay.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; ~jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; ~klieb@sillscummis.com <klieb@sillscummis.com>; _cg J&J-SaveOn <JJSaveOn@pbwt.com>
Cc: Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; David Elsberg <delsberg@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>; Matthew Nussbaum <mnussbaum@selendygay.com>
Subject: RE: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-JKS-CLW)

Elizabeth:

Thank you for your email. We have considered your position on the applicable search parameters for the CAP custodians, and decline to accept it.

As explained in our November 28 and December 22 letters, as well as during our meet and confer, we propose two search strings for the new CAP custodians designed to conform specifically to the text of the November 7 Order and to capture documents related to the CAP program, to be run from January 1, 2022 to November 7, 2023:

- ("CAPa" OR "CAPm" OR "adjustment program") AND (SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSp)
- ("CAPa" OR "CAPm" OR "adjustment program") AND "Save On" (*case sensitive*)

We anticipate substantially completing our document production using these search parameters by the end of this month.

Best,
Julia

Julia Long
She | Her | Hers
Associate

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From: Elizabeth Snow <esnow@selendygay.com>
Sent: Monday, January 8, 2024 6:33 PM
To: Long, Julia (x2878) <jlong@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; ~jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; ~klieb@sillscummis.com <klieb@sillscummis.com>; _cg J&J-SaveOn <JJSaveOn@pbwt.com>
Cc: Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; ~delsberg@selendygay.com <delsberg@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>; Matthew Nussbaum <mnussbaum@selendygay.com>
Subject: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-JKS-CLW)

Caution: External Email!

Counsel,

As discussed in this afternoon's meet-and-confer, SaveOn's position is that, under the text of the Court's November 7, 2023 order, J&J must run all search terms for the full April 1, 2016 through November 7, 2023 time period, over all six court-ordered custodians. Your position is that the Court ordered J&J to run some search terms as to those custodians for only a limited time period. You pointed to nothing in the order where the Court said this, and instead relied upon a different paragraph stating that it resolved a different motion.

We would otherwise be ready to bring the dispute to Judge Wolfson, but you mentioned the possibility of a compromise in which J&J runs all other agreed-upon search terms found on Exhibit A to your December 22, 2023 letter for the full time period except for the three CAP terms listed below, which you would run for a more limited time frame.

To avoid doubt, those CAP terms are:

- CAPa OR CAPm OR “adjustment program”
- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (case sensitive)

We are always open to a reasonable settlement to avoid raising a dispute to the Court. If you would like us to consider a compromise, please provide a specific proposal and reasoning by close of business on Wednesday, January 10, 2024.

Thanks,

Elizabeth

Elizabeth Snow

Associate [\[Email\]](#)

Selendy Gay Elsberg PLLC [\[Web\]](#)

Pronouns: she, her, hers

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EXHIBITS 2-8
CONFIDENTIAL – FILED UNDER SEAL



January 22, 2024

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By Email

Hon. Freda L. Wolfson
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**Re: JJHCS's Opposition to SaveOnSP's January 16 Motion to Compel
Johnson and Johnson Health Care Systems, Inc. v. SaveOnSP, LLC
No. 2:22-cv-02632 (JKS) (CLW)**

Dear Judge Wolfson:

On behalf of Johnson & Johnson Health Care Systems, Inc. ("JJHCS"), we write in opposition to the January 16, 2024 letter motion by Defendant SaveOnSP, LLC ("SaveOnSP") seeking additional relief on the six "CAP custodians" that were the subject of previous motion practice and Judge Waldor's November 7, 2023 order.

Once again, SaveOnSP is making motions that misstate the record and seek the production of documents that go well beyond what was previously briefed and decided. SaveOnSP asked Judge Waldor to compel JJHCS to produce additional discovery relating to its "CAP program," beginning in 2021, including through custodians who SaveOnSP insisted were "likely to have unique documents relating to the CAP program." D.E. 165 at 7–8; D.E. 166 at 2–3. At oral argument on October 30, SaveOnSP explained that it sought the designation of "seven custodians who we specifically identified as related to the CAP program," as well as CAP-focused search terms covering a "year and a half," starting "in 2022"—as counsel acknowledged, "we are not talking about a very long time period here." Oct. 30 Tr. at 76:3–78:20. Judge Waldor granted

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some but not all of the CAP-focused relief SaveOnSP sought. She decided to “open the doors on CAP,” directed JJHCS to add six custodians “with respect to the CAP program,” and even provided search parameters and a time period of “January 1, 2022 through the present” for additional CAP discovery. *See* Oct. 30 Tr. at 56:1; D.E. 173 at 2–3. JJHCS has followed this ruling to the letter.

Yet now SaveOnSP claims that Judge Waldor actually wanted JJHCS to produce documents from these “CAP custodians” not just about the CAP program, but on all manner of topics going back to April 1, 2016—*five years* before the CAP program began. SaveOnSP’s expansive reinterpretation is inconsistent with its own previous arguments and irreconcilable with Judge Waldor’s ruling. Indeed, this is the third letter brief to Your Honor in which SaveOnSP has claimed to construe Judge Waldor’s intent while studiously avoiding any citation to the October 30 conference, at which these very issues were discussed for several hours. That omission is telling. The full record shows that Judge Waldor granted limited relief as to the CAP program and related custodians; there is no basis to disturb her ruling. Accordingly, Your Honor should deny SaveOnSP’s motion. SaveOnSP should focus its considerable energies not on meritless discovery motions but rather on timely completing its own discovery obligations without further delay or distraction.

I. SaveOnSP Sought Narrow Relief Related to the CAP Program

SaveOnSP asked Judge Waldor to compel JJHCS to add certain custodians due to their ostensible involvement in the “CAP Program,” beginning “in or around 2021”—in particular, because SaveOnSP insisted that documents about the CAP program were “crucial.” D.E. 165 at 7–8. The relevant portion of SaveOnSP’s motion is excerpted below:

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CAP Program

As described in more detail in a forthcoming submission.

Ex. 74 (JJHCS_00133549)

Ex. 75 (JJHCS_00040622)

Ex. 12

(JJHCS_00041215). As part of this program, JJHCS changed CarePath's terms and conditions ("T&Cs") applicable to its drugs Stelara and Tremfya to (1) reduce the maximum amount J&J would pay patients who were members of maximizers from \$20,000 to \$6,000, and (2) eliminate payments to patients "who are members of health plans that claim to eliminate their out-of-pocket costs."⁵ See, e.g. Dkt. No. 31-7.

(JJHCS_0003353).

Documents regarding these efforts—both actions taken and not taken—are crucial to SaveOnSP's mitigation and acquiescence defenses. See Aff. Defs. ¶¶ 24-29.

Id. (highlighting supplied).

SaveOnSP then repeated this rationale as to the individual custodians—that each was “likely to have unique documents regarding the CAP program,” which, again, was created “in or around 2021.” See, e.g., *id.* at 8 (“Kinne is likely to have unique documents regarding the CAP program”), 9 (“Longbothum is likely to have unique documents regarding the CAP program”), *et seq.* And SaveOnSP expressly linked its motion to a “forthcoming submission,” i.e., a follow-on SaveOnSP motion on the same subject of CAP program discovery:

SaveOnSP Motion, D.E. 165, at p. 7	SaveOnSP Motion, D.E. 166, at pp. 2–3
As described in more detail in a forthcoming submission, in or around 2021, JJHCS created its CAP program as part of an effort to respond to accumulators and maximizers...	In or around 2021, J&J created a program called a “cost adjustment program” or “copay adjustment program” (“CAP”), as part of an effort to “adjust” the amount of copay assistance payments that J&J made to patients who were on accumulators and maximizers....

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II. Judge Waldor Addressed and Resolved Both CAP Motions Together, Ordering Narrower Relief than SaveOnSP Sought

Because SaveOnSP had filed two motions on the same topic, Judge Waldor chose to address them together, and took up SaveOnSP's requested "CAP custodians" during an extended colloquy about what JJHCS should produce "in terms of CAP." *See* Oct. 30 Tr. at 54:8–56:6 *et seq.* As part of that colloquy, after SaveOnSP's counsel described his request for CAP-focused search terms, he characterized SaveOnSP's ask as modest and focused:

MR. ELSBERG: ...the CAP program started in -- thank you -- in 2022. So we are not talking about a very long time period here.

THE COURT: So in terms of search terms for CAP A, CAP M, and adjustment programs, it's 2022 through today.

MR. ELSBERG: Yes. It's 2022 through whatever date it is that they're seeking damages.

Id. at 77:4–12. Judge Waldor then again sought to confirm the CAP relief SaveOnSP requested as to the so-called CAP custodians. *Id.* at 77:16–17 ("THE COURT: What about these seven custodians that we were talking about before?"). Notably, SaveOnSP's counsel did *not* say that the seven employees were relevant to issues other than CAP, or that Judge Waldor should compel JJHCS to produce documents from them going back five years before the CAP program began. Just the opposite: SaveOnSP's entire argument was that these employees should be added because they were "*specifically identified as related to the CAP program,*" and asked Judge Waldor to grant the motion as to the "six custodians where we have strong evidence of their [involvement] in CAP." *Id.* at 77:21–20 (emphasis supplied).

It is in this context—an extended discussion of CAP-related discovery across two overlapping motions—that Judge Waldor's November 7 order arose. In that order, she directed

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JJHCS to add “six of the custodians that SaveOnSp identified with regard to the CAP program,” as SaveOnSP’s counsel had specifically requested. D.E. 173 at 2. And she ordered JJHCS to run specific “custodial document searches,” directly tied to the CAP-related terms discussed at the conference,¹ for the narrow time period of “January 1, 2022 to the present.” *Id.* at 2–3.

Thus, SaveOnSP’s present insistence that the two motions were “separate” and that “Judge Waldor resolved them separately” is refuted by the record. This is why SaveOnSP completely ignores the October 30 transcript when it insists that Judge Waldor intended to order extremely broad discovery from these CAP custodians going back to 2016, five years before the CAP program began. One will search the October 30 transcript in vain for any evidence that this was Judge Waldor’s intent. Instead, she said the opposite: “I’m going to open the doors *on CAP*.” Oct. 30 Tr. at 56:1 (emphasis supplied).²

¹ Although it is not material to this dispute, for purposes of ensuring a clear record we note that SaveOnSP’s letter incorrectly describes the search string Judge Waldor ordered JJHCS to run. *See* SaveOnSP Jan. 16, 2024 Letter at 2 n.1. Citing its own previous motion, D.E. 166, SaveOnSP claims that Judge Waldor ordered JJHCS to run the terms listed in footnote 2 of its letter (“CAPa” OR “CAPm” or “adjustment program”). That is not accurate. In fact, Judge Waldor compelled a narrower search of only documents that hit those terms *and* “the term ‘SaveOn’ (or reasonable variations / abbreviations).” D.E. 173 at 2–3. This was another topic of discussion at the October 30 conference, with SaveOnSP’s counsel repeatedly trying to change the “*and* SaveOn” to “*or* SaveOn” to vastly broaden the scope of the search, and Judge Waldor repeatedly and unequivocally declining to do so. *See* Oct. 30 Tr. at 101:14–108:22.

² For this reason, SaveOnSP is not helped by its repeated reliance on a single line in D.E. 165, in which it asked the Court “to compel JJHCS to add the above twelve custodians and run all agreed-upon or Court-ordered search terms . . . over their files.” D.E. 165 at 15. Simply put, Judge Waldor did not grant that relief. Instead, she ordered JJHCS to produce documents from a smaller number of custodians “with regard to the CAP program” using the far narrower search parameters discussed above.

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III. There Is No Basis to Expand the Scope of Judge Waldor’s Ruling to Unrelated Topics and Irrelevant Time Periods

In the alternative, SaveOnSP seeks a do-over on the grounds that “these custodians have relevant documents that do not contain the terms that J&J says it will use.” SaveOnSP Jan. 16, 2024 Letter at 3. The do-over attempt is improper and the justification is a strawman. The real question—particularly now, as this case approaches its two-year anniversary—is whether the employees at issue would have *unique* relevant documents, i.e., documents that are not merely cumulative of what JJHCS has already produced from its sixteen full custodians. *See* Fed. R. Civ. P. 26(b)(2)(C)(i) (barring “unreasonably cumulative or duplicative” discovery); *Sugg v. Virtusa*, 2020 WL 6585872, at *2 (D.N.J. Nov. 10, 2020) (denying motion to compel where, as here, the existing custodians included “high-ranking executives in the company, as well as the heads of several relevant business groups,” and the movant failed to show that additional requested custodians had “any unique knowledge”). And the answer to the question whether this review would lead to unique documents is no: as JJHCS explained to SaveOnSP in March of 2023, when SaveOnSP first began asking for some of these employees to be added, we have no reason to believe that any of them would have unique, non-privileged documents or communications going back to 2016 that relate to the non-CAP issues in this lawsuit.³

³ SaveOnSP itself has observed that, even though JJHCS has designated sixteen “full” custodians, most of its custodial documents came from the files of a core group of four employees most directly involved in the relevant issues. *See* D.E. 165 at 2 (SaveOnSP complaining that “the vast majority” of JJHCS’s production “came from only *four* custodians or from noncustodial files”); *id.* at 16 (JJHCS explaining that “[i]f anything, this reflects simply that the relevant knowledge about SaveOnSP’s operations was limited to a small number of people at JJHCS, which is not surprising given SaveOnSP’s self-professed goal of operating in the shadows”). This prospect of diminishing returns is presumably why Judge Waldor rejected SaveOnSP’s blunderbuss demand for twelve more JJHCS custodians after the substantial completion deadline for document production had

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None of the exhibits to SaveOnSP's letter support a different conclusion. For starters, SaveOnSP has had some of the documents it now cites for more than ten months—they were part of JJHCS's very first custodial production—demonstrating how stale SaveOnSP's arguments are. These are documents that could have been presented to Judge Waldor by SaveOnSP in support of its prior motions; SaveOnSP chose not to do so. Moreover, in most of the email chains cited by SaveOnSP, the email involving the CAP custodian at issue is fully redacted for privilege. *See* Ex. 3 at -227; Ex. 5 at -963–64; Ex. 6 at -275. There is, of course, no good reason to add ever-more custodians whose relevant communications are privileged and therefore will not be produced regardless. All else aside, the fact remains that every single JJHCS document now cited by SaveOnSP was already produced from the files of at least one existing JJHCS custodian.⁴ Taken together, they confirm that SaveOnSP already has full coverage from JJHCS's existing custodians. There is no reason, other than harassment and delay, for SaveOnSP to demand more.

* * *

It is time for this case to move forward, and JJHCS is committed to making that happen. We expect to substantially complete JJHCS's production of documents by the end of January, so that the parties can meet the Court's fact discovery deadline of April 25, 2024. Unfortunately, SaveOnSP has no intention of meeting that deadline. After our last appearance

already elapsed, and instead directed JJHCS only to produce additional discovery that was specific to the CAP program.

⁴ SaveOnSP also attaches one document produced by a third party, [REDACTED]
[REDACTED]t—who is already a “full” JJHCS custodian.

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before Your Honor, SaveOnSP announced that it “intends” to substantially complete its own refresh production “by March 31, 2024.” That obviously will not leave the parties with enough time to complete all fact depositions by April 25 as the Court ordered. And the delay is the point. Every month that this litigation continues is another month that SaveOnSP is able to misappropriate millions of dollars from JJHCS’s patient assistance programs, harming patients and JJHCS alike. Indeed, SaveOnSP is only making a “refresh production” in the first place because it renounced the parties’ previous agreement on a cutoff date, and unilaterally insisted that custodial discovery must be carried forward into the present. *See, e.g.*, Oct. 30 Tr. at 97:14–98:2. Having eagerly sought out that obligation, SaveOnSP cannot use it as an excuse for noncompliance with yet another discovery deadline.

In light of this development, we request that Your Honor direct SaveOnSP to substantially complete its production by February 15, so that depositions can proceed and fact discovery can finally end. SaveOnSP has ample resources to meet the Court’s deadline if it focuses its energies on compliance, and not on the endless re-litigation of meritless motions to compel.

We appreciate Your Honor’s attention to this matter, and we are available to answer any questions.

Respectfully submitted,

/s/ Harry Sandick

Harry Sandick

cc: Counsel for SaveOnSP



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Admitted in New York
and New Jersey

January 23, 2024

VIA E-Mail

Hon. Freda L. Wolfson, U.S.D.J. (ret.)
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC*
No. 2:22-cv-02632 (JKS) (CLW)

Dear Special Master Wolfson:

Defendant Save On SP LLC (“**SaveOn**”) replies to Johnson & Johnson Health Care Systems, Inc. (with its affiliates, “**J&J**”)’s January 22, 2024 opposition to SaveOn’s January 16, 2024 motion.

In Dkt. 165, SaveOn moved to compel J&J to add “twelve custodians and run ***all*** agreed-upon or Court-ordered search terms ... over their files.” Dkt. 165 at 15 (emphasis added). In her November 7 Order, Judge Waldor granted that motion as to six custodians, with no limit on the search terms to be run. Dkt. 173 at 2. J&J now asserts that the Order requires it to run only limited “CAP” search terms for a limited time period. This new position, which J&J did not raise in

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its motion papers or at the October 30, 2023 discovery conference, is part of a recurring pattern: J&J insists that SaveOn review massive numbers of documents at breakneck speed; at the same time, J&J tries to narrow its own document review by minimizing custodians, search terms, and topics; J&J then demands a prompt end to discovery while it still withholds key materials. The Court should reject this approach. The Order requires J&J to use all search terms. SaveOn asked the Court to add these custodians and run all search terms over their files because of compelling evidence that they were involved in relevant aspects of J&J's business; running narrower terms over a limited time would omit relevant documents. J&J's arguments are unavailing.

First, while J&J says that SaveOn sought to add the six custodians at issue solely because they were involved with the CAP program, Opp. 2-3, SaveOn pointed out in its motion that these custodians were involved with multiple relevant aspects of J&J's business. *See, e.g.*, Dkt. 165

at 8 (

), Dkt. 165 at 10 (

).

Second, while J&J suggests that SaveOn asked the Court to compel it to run only the CAP terms for these custodians, Opp. 3, SaveOn plainly asked the Court to compel J&J to run “*all*” search terms for all requested custodians, not limited terms. Dkt. 165 at 15 (emphasis added).

Third, J&J’s assertion that Judge Waldor issued combined relief for SaveOn’s motion for J&J to add custodians (Dkt. 165) and its motion for J&J to run the CAP terms (Dkt. 166) is flatly incorrect—in the November 7 Order, Judge Waldor decided those separate motions separately. Dkt. 173 at 2 (addressing Dkt. 165), 2-3 (addressing Dkt. 166). J&J asserts that, in the discovery conference, after hearing argument on the CAP terms, Judge Waldor asked SaveOn “to confirm the CAP relief SaveOnSP requested as to the so-called CAP custodians” and SaveOn did not ask that J&J run all search terms for those custodians. Opp. 4-5 (citing Oct. 30 Tr. at 77:4-17). That is not what happened. After hearing argument on the CAP terms, the Court asked SaveOn’s counsel, “What else do you want?”; SaveOn’s counsel said that it sought nothing else on CAP terms (“That’s what we’re seeking on this one”); the Court then moved to the separate topic of custodians (“What about these seven custodians that we were talking about before?”), on which separate SaveOn counsel presented argument, *id.* at 77:8-78:20. The Court never asked SaveOn to “confirm the CAP relief” that it sought for the custodians, J&J never raised the issue, and the Court never said or suggested that J&J need run only CAP terms for the custodians.

Fourth, in asserting that the custodians do not have unique, relevant documents, J&J tries to rewrite the discovery rules. Opp. 6. SaveOn cites evidence showing that they were deeply involved with relevant aspects of J&J’s business, Dkt. 165 at 7-14; this is more than enough to create a fair inference that these J&J employees have unique documents that the CAP terms would not identify and justify the Court’s Order that J&J run all search terms over their documents. *See City of Sterling Heights Gen. Emps.’ Ret. Sys. v. Prudential Fin., Inc.*, No. 12-CV-05275 (MCA), 2015 WL 5055241, at *3 (D.N.J. Aug. 21, 2015) (compelling defendants to add up to ten additional custodians for a total of 76 custodians, given size and scale of the action and the number of defendant personnel involved). J&J has also produced emails involving these custodians on

which other custodians were not copied (the emails were produced only because they were subsequently forwarded to other custodians), *e.g.*, Ex. 6 (JJHCS_00142275), indicating that these custodians may well have documents that are not in other custodians' files. J&J cannot credibly assert the contrary, having not reviewed the documents that it intends to exclude.

Fifth, with no substantive response to the documents that SaveOn cites, J&J asks Your Honor to ignore them. J&J says that SaveOn could have cited some documents in its custodians motion, Opp. 7—but SaveOn cites them now to show that limiting J&J's searches to the CAP terms would exclude relevant evidence, Mot. at 3-4, something not at issue in its custodians motion, as J&J never raised it. J&J notes that it redacted some cited emails for privilege, Opp. 7—but it does not say that all relevant documents of these non-attorneys are privileged and SaveOn contests many of J&J's privilege claims, Ex. 9 (Jan. 2, 2024 Ltr. from T. Stone to J. Long). J&J also notes that SaveOn cites only documents that J&J already produced, Opp. 7—but SaveOn obviously could not cite documents that J&J withholds, and those documents support SaveOn's motion.

Finally, J&J accuses SaveOn of delay in its own document production; these accusations are untrue and irrelevant to this motion.¹ J&J then asks the Court to order SaveOn to substantially complete its refresh production by February 15, 2024. While that request is inappropriate

¹ Among other things, J&J suggests that SaveOn is responsible for the Court's order that the parties conduct "refresh" productions because SaveOn purportedly "renounced the parties' previous agreement on a cutoff date and unilaterally insisted that custodial discovery must be carried forward into the present." Opp. 8 (citing Oct. 30 Tr. 97:14-98:2). This is decidedly not so. The parties generally agreed to end document productions on July 1, 2022, but reserved rights to request production past that point as needed. *See, e.g.*, Ex. 10 (Oct. 3, 2023 Ltr. from A. Dunlap to S. Arrow (agreeing to run certain search terms for one custodian for the period July 1, 2022 to October 1, 2023)). Based on evidence of J&J's ongoing CAP program, SaveOn moved the Court to compel J&J to run three CAP-related search terms to the present, Dkt. 166; it did *not* ask that J&J update its entire document production using the full set of search terms that J&J had previously run. At the October 30, 2023 conference, J&J's counsel nevertheless called SaveOn's request "tantamount" to a "wholesale update of our document production," Oct. 30 Tr. 86:2-8, which it was not. Then, having

Hon. Freda L. Wolfson

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here—in an opposition to a separate motion without any prior notice or attempt to meet and confer—SaveOn would be glad to discuss an appropriate substantial completion deadline that accounts for *all* additional documents that J&J must produce, including from these custodians.

SaveOn appreciates the Court’s attention to this matter.

Respectfully submitted,

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Attorneys for Defendant Save On SP, LLC

given SaveOn no notice (much less met and conferred), J&J’s counsel asked Judge Waldor to compel SaveOn to do a “full update” of its own production through the present, Oct. 30 Tr. 87:9-18. Simply put: the refresh production came on J&J’s motion, not SaveOn’s.

Exhibit 9

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Taylor Stone
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January 2, 2023

Via E-mail

Julia Long
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
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Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC (Case No. 2:22-cv-02632-ES-CLW)*

Dear Julia,

We write regarding J&J's October 6, 2023 privilege log.

First, J&J withholds documents based on attorney-client privilege without indicating that they involve communications with counsel. For example, PLO00000172 contains a document called [REDACTED]

[REDACTED] The author of this document is Adrienne Minecci, who is not an attorney, and there is no counsel listed. Exhibit 1 contains a list of withheld documents with no indication of counsel involved. Please produce these documents or provide a detailed basis for J&J's assertion of attorney-client privilege for each document.

Second, J&J withholds documents based on attorney-client privilege that do not appear privileged based on their descriptions. For example, PLO00000586 contains a document entitled "[REDACTED]"

[REDACTED] This document was not authored by attorneys and its name does not indicate that it contains legal advice. J&J also withheld documents for which it apparently could have redacted any privileged information instead of withholding the documents in full. For example, PLO00000552 contains a document entitled "[REDACTED]" It is implausible that this document, which the parent email indicates is new hire training material, consists solely of legal advice. Exhibit 2 contains a list of documents that appear to be entirely or partially non-privileged. Please produce these

Julia Long
January 2, 2023

documents (with redactions if warranted) or provide a detailed basis for J&J's assertion of attorney-client privilege over each document or redaction.

Third, J&J withholds 131 calendar invites under either attorney-client privilege or work product doctrine. *See, e.g.*, PLO00000008, PLO00000398, PLO00000820–21, PLO00001084. The invites are not subject to the attorney-client privilege: Even if the purpose of the meetings was to provide legal advice, general facts such as the time of or participants in those meetings are not privileged. *See* N.J. R. Evid. § 504 (stating that the privilege applies to “communications,” not surrounding facts). The invites also do not qualify for work product doctrine, as there is no indication that they were prepared predominantly for use in litigation. Exhibit 3 contains a list of these calendar entries. Please produce them or provide a detailed basis for J&J's privilege assertions over each document.

Fourth, J&J failed to provide a privilege log for documents it produced with redactions. J&J agreed to produce its privilege log on October 6, 2023, *see e.g.*, Aug. 31, 2023 Letter from J. Long to M. Nelson, and never stated that it would exclude documents redacted for privilege; SaveOn agreed to produce its privilege log on the same date, *see e.g.*, Sept. 13, 2023 Letter from M. Nelson to J. Long, and its log included redacted documents. All assertions of privilege must be justified by a specific explanation, including a presentation of “factual grounds and legal analyses.” *Seacoast Builders Corp. v. Rutgers*, 358 N.J. Super. 524, 542 (App. Div. 2003). J&J failed to provide any justification for its privilege redactions, many of which appear inappropriate. *See, e.g.*, JJHCS_00112943 (redacting all substantive content in [REDACTED], none of whom are attorneys); JJHCS_00105491 (redacting what appears to be a [REDACTED] to several non-attorneys with no attorneys on the chain); JJHCS_00114204 (redacting an [REDACTED]); JJHCS_00113376 (redacting all substantive content in an email thread, part of which appears to be [REDACTED]). Please update your privilege log to include all documents redacted for privilege.

Fifth, J&J appears to inappropriately assert the attorney work product doctrine for many documents. This doctrine protects the confidentiality of papers prepared by, or on behalf of, attorneys in anticipation of litigation. Fed. R. Civ. P. 23(b)(3)(A). J&J asserts this privilege relating to this litigation, filed in May 2022, for documents starting in 2017, *see, e.g.*, rows PLO00000037–38, 48, and continuing to late 2021. *See, e.g.*, rows PLO00000883, 0981, 1024, 1045, and 2738. While J&J notes that the documents “provide[] information necessary for counsel to render legal advice regarding current litigation,” *id.*, the work product doctrine does not apply retroactively to documents created before litigation was reasonably anticipated. *See Rivard v. Am. Home Prod., Inc.*, 391 N.J. Super. 129, 155 (App. Div. 2007). Exhibit 4 contains a list of documents withheld solely on the basis of the work product privilege that likely date from before J&J anticipated this litigation. Please (1) state the date on which J&J first anticipated this litigation; and (2)

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produce all documents before that date for which J&J currently asserts only the work produce privilege.

Sixth, J&J withholds or redacts documents based on attorney-client privilege where the privilege appears to have been waived [REDACTED]

[REDACTED] See, e.g., JJHCS_00121527-51 ([REDACTED]); JJHCS_00035175-80 ([REDACTED]); JJHCS_00122617-22 ([REDACTED]); JJHCS_00112043-47 ([REDACTED]); JJHCS_00111939 ([REDACTED]); JJHCS_00026849 ([REDACTED]). Communication made voluntarily with a “non-privileged” person breaks the attorney-client privilege. See *Ashland Inc. v. G-I Holdings Inc.*, 2019 WL 1552750 (N.J. Super. Ct. App. Div. Apr. 10, 2019). The party claiming the privilege must show in a non-conclusory fashion why the privilege should apply. *Rivard*, 391 N.J. Super at 152. Exhibit 5 contains a list of these documents. Please produce these documents or explain in detail why any privilege in the documents was not waived by disclosure to a third party.

We request a response and production of all documents requested herein by January 9, 2023. We reserve all rights and are available to meet and confer.

Regards,

/s/ Taylor Stone

Taylor Stone
Associate

Julia Long
January 2, 2023

Exhibit 1

Documents with no counsel listed:

PL000000043	PL000000044	PL000000049	PL000000096
PL000000098	PL000000099	PL000000100	PL000000133
PL000000168	PL000000170	PL000000171	PL000000172
PL000000176	PL000000177	PL000000222	PL000000223
PL000000226	PL000000227	PL000000230	PL000000231
PL000000239	PL000000240	PL000000241	PL000000243
PL000000244	PL000000245	PL000000246	PL000000256
PL000000271	PL000000272	PL000000273	PL000000274
PL000000275	PL000000290	PL000000291	PL000000295
PL000000313	PL000000314	PL000000349	PL000000376
PL000000386	PL000000394	PL000000456	PL000000457
PL000000520	PL000000521	PL000000524	PL000000637
PL000000714	PL000000762	PL000000763	PL000000850
PL000000904	PL000000905	PL000000906	PL000000907
PL000000947	PL0000002729	PL000000961	PL000000966
PL000000968	PL000000998	PL000001000	PL000001001
PL000001004	PL000001005	PL000001006	PL000001007
PL000001018	PL000001022	PL000001063	PL000001064
PL000001065	PL000001071	PL000001105	PL000002762
PL000001123	PL000001128	PL000001129	PL000001132
PL000001133	PL000001167	PL000001176	PL000001177
PL000001178	PL000001241	PL000001242	PL000001258
PL000001262	PL000001265	PL000001266	PL000001267
PL000001268	PL000001379	PL000001418	PL000002766
PL000001422	PL000001520	PL000001522	PL000001549
PL000001550	PL000001556	PL000001557	PL000001611
PL000001612	PL000001613	PL000001614	PL000001630
PL000001631	PL000001628	PL000001629	PL000001632
PL000001709	PL000001711	PL000001721	PL000001727
PL000001728	PL000001729	PL000001730	PL000001757
PL000001758	PL000001783	PL000001784	PL000001785
PL000001852	PL000001901	PL000001903	PL000001906
PL000001907	PL000001990	PL000001991	PL000002791
PL000002792	PL000002793	PL000002794	PL000002795
PL000002796	PL000002797	PL000002798	PL000002799
PL000002800	PL000002801	PL000002802	PL000002012
PL000002015	PL000002017	PL000002020	PL000002021
PL000002018	PL000002019	PL000002030	PL000002031
PL000002038	PL000002039	PL000002051	PL000002052
PL000002053	PL000002054	PL000002411	PL000002488
PL000002610	PL000002666	PL000002664	PL000002665
PL000002725			

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Exhibit 2**Documents that appeared non-privileged based on description:**

PL000000001	PL000000002	PL000000004	PL000000014
PL000000033	PL000000034	PL000000061	PL000000062
PL000000097	PL000000173	PL000000380	PL000000382
PL000000383	PL000000414	PL000000420	PL000000423
PL000000424	PL000000426	PL000000427	PL000000428
PL000000430	PL000000431	PL000000505	PL000000506
PL000000552	PL000000554	PL000000555	PL000000556
PL000000584	PL000000585	PL000000586	PL000000587
PL000000671	PL000000698	PL000000735	PL000000736
PL000000738	PL000000775	PL000000833	PL000000857
PL000000858	PL000000861	PL000000862	PL000000867
PL000000868	PL000000869	PL000000870	PL000000871
PL000000872	PL000000918	PL000000925	PL000000926
PL000000935	PL000000950	PL000000965	PL000001021
PL000001046	PL000001060	PL000001061	PL000001075
PL000001291	PL000001323	PL000001324	PL000001538
PL000001551	PL000001552	PL000001657	PL000001658
PL000001722	PL000001744	PL000001780	PL000001781
PL000001782	PL000001795	PL000001872	PL000001876
PL000001892	PL000001977	PL000001992	PL000001994
PL000001995	PL000001996	PL000002000	PL000002001
PL000002014	PL000002242	PL000002259	PL000002269
PL000002308	PL000002776	PL000002788	PL000002789
PL000002790	PL000002803	PL000002804	PL000002805

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Exhibit 3

Calendar Entries:

PL000000008	PL000000396	PL000000398	PL000000682
PL000000820	PL000000821	PL000000829	PL000000830
PL000000943	PL000000945	PL0000001084	PL0000001087
PL0000001109	PL0000001142	PL0000001143	PL0000001145
PL0000001146	PL0000001148	PL0000001152	PL0000001153
PL0000001154	PL0000001155	PL0000001156	PL0000001157
PL0000001158	PL0000001159	PL0000001212	PL0000001213
PL0000001215	PL0000001216	PL0000001217	PL0000001229
PL0000001253	PL0000001257	PL0000001259	PL0000001263
PL0000001270	PL0000001290	PL0000001292	PL0000001293
PL0000001305	PL0000001306	PL0000001530	PL0000001538
PL0000001562	PL0000001589	PL0000001590	PL0000001609
PL0000001615	PL0000001616	PL0000001617	PL0000001621
PL0000001622	PL0000001706	PL0000001900	PL0000001913
PL0000001919	PL0000001920	PL0000001922	PL0000001923
PL0000001924	PL0000001926	PL0000001927	PL0000001933
PL0000001934	PL0000001935	PL0000001936	PL0000001938
PL0000001941	PL0000001942	PL0000001950	PL0000001951
PL0000001952	PL0000001953	PL0000001955	PL0000001956
PL0000001961	PL0000001962	PL0000001965	PL0000001966
PL0000001967	PL0000001968	PL0000001969	PL0000001970
PL0000001971	PL0000001972	PL0000002007	PL0000002057
PL0000002081	PL0000002082	PL0000002083	PL0000002088
PL0000002089	PL0000002117	PL0000002119	PL0000002120
PL0000002122	PL0000002191	PL0000002250	PL0000002252
PL0000002470	PL0000002471	PL0000002472	PL0000002478
PL0000002515	PL0000002555	PL0000002556	PL0000002558
PL0000002565	PL0000002568	PL0000002570	PL0000002587
PL0000002591	PL0000002592	PL0000002593	PL0000002613
PL0000002616	PL0000002667	PL0000002668	PL0000002669
PL0000002670	PL0000002675	PL0000002676	PL0000002680
PL0000002681	PL0000002685	PL0000002689	PL0000002695
PL0000002698	PL0000002700	PL0000002750	

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Exhibit 4

Documents withheld on the basis of the work product doctrine before JHCS likely anticipated this litigation:

PL000000037	PL000000038	PL000000048	PL000000051
PL000000104	PL000000204	PL000000224	PL000000229
PL000000234	PL000000242	PL000000263	PL000000264
PL000000279	PL000000387	PL000000392	PL000000393
PL000000401	PL000000455	PL000000483	PL000000484
PL000000519	PL000000609	PL000000789	PL000000815
PL000000882	PL000000883	PL000000962	PL000000971
PL000000972	PL000000981	PL000001024	PL000001030
PL000001045	PL000001048	PL000001050	PL000001058
PL000001079	PL000001086	PL000001088	PL000001096
PL000001100	PL000001108	PL000001109	PL000001110
PL000001113	PL000001118	PL000001119	PL000001120
PL000001121	PL000001122	PL000002734	PL000002735
PL000002736	PL000002737	PL000002738	PL000002739
PL000002740	PL000002741	PL000002744	PL000002746
PL000002748	PL000002749	PL000002761	PL000002763

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Exhibit 5

Documents disclosed to third parties:

PL000000017	PL000000025	PL000000026	PL000000027
PL000000028	PL000000029	PL000000031	PL000000032
PL000000052	PL000000053	PL000000055	PL000000065
PL000000069	PL000000079	PL000000080	PL000000083
PL000000084	PL000000086	PL000000087	PL000000088
PL000000089	PL000000090	PL000000093	PL000000094
PL000000095	PL000000102	PL000000103	PL000000105
PL000000106	PL000000107	PL000000108	PL000000109
PL000000110	PL000000115	PL000000116	PL000000117
PL000000118	PL000000124	PL000000125	PL000000131
PL000000137	PL000000287	PL000000288	PL000000289
PL000000304	PL000000305	PL000000307	PL000000308
PL000000309	PL000000310	PL000000311	PL000000312
PL000000316	PL000000322	PL000000323	PL000000331
PL000000332	PL000000333	PL000000334	PL000000335
PL000000336	PL000000337	PL000000338	PL000000359
PL000000364	PL000000370	PL000000377	PL000000381
PL000000388	PL000000389	PL000000407	PL000000421
PL000000429	PL000000432	PL000000433	PL000000434
PL000000435	PL000000436	PL000000437	PL000000465
PL000000466	PL000000467	PL000000468	PL000000469
PL000000470	PL000000471	PL000000472	PL000000475
PL000000476	PL000000477	PL000000478	PL000000479
PL000000480	PL000000485	PL000000617	PL000000631
PL000000632	PL000000633	PL000000634	PL000000798
PL000000800	PL000000801	PL000000808	PL000000809
PL000000823	PL000000824	PL000000825	PL000000834
PL000000835	PL000000836	PL000000837	PL000000838
PL000000839	PL000000842	PL000000843	PL000000888
PL000000902	PL000000955	PL000000956	PL000000983
PL000000990	PL000000991	PL000000992	PL000000993
PL000000994	PL000000995	PL000000996	PL000000997
PL000001013	PL000001019	PL000001025	PL000001026
PL000001027	PL000001028	PL000001031	PL000001032
PL000001037	PL000001038	PL000001040	PL000001049
PL000001056	PL000001081	PL000001082	PL000001130
PL000001131	PL000001164	PL000001188	PL000001189
PL000001199	PL000001207	PL000001240	PL000001289
PL000001307	PL000001313	PL000001316	PL000001317
PL000001343	PL000001344	PL000001345	PL000001352
PL000001353	PL000001417	PL000001427	PL000001431
PL000001443	PL000001456	PL000001459	PL000001478

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PL000001479	PL000001490	PL000001491	PL000001492
PL000001521	PL000001526	PL000001527	PL000001528
PL000001537	PL000001558	PL000001559	PL000001610
PL000001636	PL000001637	PL000001660	PL000001667
PL000001678	PL000001679	PL000001680	PL000001681
PL000001682	PL000001684	PL000001685	PL000001687
PL000001692	PL000001693	PL000001694	PL000001695
PL000001696	PL000001701	PL000001718	PL000001740
PL000001745	PL000001746	PL000001747	PL000001749
PL000001750	PL000001751	PL000001759	PL000001847
PL000001848	PL000001849	PL000001850	PL000001853
PL000001854	PL000001858	PL000001864	PL000001865
PL000001867	PL000001868	PL000001869	PL000001870
PL000001874	PL000001877	PL000001879	PL000001891
PL000001908	PL000001909	PL000001916	PL000001917
PL000001925	PL000001928	PL000001929	PL000001930
PL000001931	PL000001973	PL000001974	PL000001984
PL000001993	PL000002032	PL000002040	PL000002126
PL000002127	PL000002132	PL000002198	PL000002292
PL000002296	PL000002297	PL000002298	PL000002299
PL000002300	PL000002303	PL000002306	PL000002307
PL000002313	PL000002319	PL000002340	PL000002370
PL000002424	PL000002658	PL000002770	PL000002780

Exhibit 10

CONFIDENTIAL – FILED UNDER SEAL